

APPEAL NO. 010678

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 6, 2001. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not include the cervical spine, and the claimant had disability from November 20, 1997, through the date of the hearing; however, the claimant is not entitled to temporary income benefits (TIBs) during the period of time she was already receiving TIBs for her _____, injury, or after 104 weeks from the date income benefits began to accrue for the _____, injury.

The claimant has appealed on sufficiency grounds. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury to her right hand on _____, and to her left hand, elbow and shoulder on _____. The claimant received TIBs for her _____, injury through September 29, 1999. The claimant contends that the compensable injuries extend to her neck because her job required "her to continually be bent over a conveyor belt with her head in a downward position." The claimant further contends that she did not have disability from the _____, injury until she was taken off work by Dr. K for that injury on August 12, 1999.

Whether an employee has "a disease or infection naturally resulting from the damage or harm," or whether an injury extends to a particular member of her body, is a factual matter for the hearing officer to determine. Texas Workers' Compensation Appeal No. 93744, decided October 1, 1993. There was conflicting medical evidence on this issue. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer concluded that the "compensable injury does not include the cervical spine." That conclusion is supported by the evidence.

The claimant asserts that she did not have disability from the _____, left side injury until she was taken off work by Dr. K on August 12, 1999. There is sufficient evidence in the record to support the hearing officer's determination that disability for this injury commenced on November 20, 1997. Dr. K's March 1, 2000, report states, "A previous office note of 7/14/98 indicates that she had carpal tunnel symptoms in both hands, right greater than left, in September 1997." The claimant testified that her left wrist bothered her so much back in November of 1997, that she felt she couldn't work with it. The claimant further testified that there was a period of time that she was reluctant to have

surgery done to her left wrist, because her right wrist was still bothering her and she would not be able to function with two bad hands. The hearing officer's conclusion as to the period of disability for the _____, injury is supported by the evidence.

An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge